Senate

General Assembly

File No. 344

February Session, 2010

Senate Bill No. 283

Senate, April 7, 2010

The Committee on Human Services reported through SEN. DOYLE of the 9th Dist., Chairperson of the Committee on the part of the Senate, that the bill ought to pass.

AN ACT CONCERNING AUDITS BY THE DEPARTMENT OF SOCIAL SERVICES.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

Section 1. Subsection (d) of section 17b-99 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective July 1, 2010*):

(d) The Commissioner of Social Services, or any entity with whom the commissioner contracts, for the purpose of conducting an audit of a service provider that participates as provider of services in a program operated or administered by the department pursuant to this chapter or chapter 319t, 319v, 319y or 319ff, shall conduct any such audit in accordance with the provisions of this subsection. For purposes of this subsection "provider" means a person, public agency, private agency or proprietary agency that is licensed, certified or otherwise approved by the commissioner to supply services authorized by the programs set forth in said chapters.

(1) Not less than thirty days prior to the commencement of any such audit, the commissioner, or any entity with whom the commissioner contracts to conduct an audit of a participating provider, shall provide written notification of the audit to such provider, unless the commissioner, or any entity with whom the commissioner contracts to conduct an audit of a participating provider makes a good faith determination that (A) the health or safety of a recipient of services is at risk; or (B) the provider is engaging in vendor fraud. A copy of the regulations established pursuant to subdivision (12) of this subsection shall be appended to such notification.

(2) Any audit conducted pursuant to this subsection shall be limited to a review of claims filed during the two-year period prior to the date the provider receives written notice from the commissioner of the audit, pursuant to subdivision (1) of this subsection, or two hundred claims, whichever is less.

[(2)**]** (3) Any clerical error, including, but not limited to, recordkeeping, typographical, scrivener's or computer error, discovered in a record or document produced for any such audit, shall not of itself constitute a wilful violation of program rules and shall not be used as the basis for extrapolated projections unless proof of intent to commit fraud or otherwise violate program rules is established.

[(3)**]** (4) A finding of overpayment or underpayment to a provider in a program operated or administered by the department pursuant to this chapter or chapter 319t, 319v, 319y or 319ff, shall not be based on extrapolated projections unless (A) **[**there is a sustained or high level of payment error involving the provider,**]** the payment error rate involving the provider exceeds ten per cent, or (B) documented educational intervention has failed to correct the level of payment error. **[**, or (C) the value of the claims in aggregate exceeds one hundred fifty thousand dollars on an annual basis.**]**

[(4)**]** (5) A provider, in complying with the requirements of any such audit, shall be allowed not less than thirty days to provide documentation in connection with any discrepancy discovered and

brought to the attention of such provider in the course of any such audit.

[(5)**]** (6) The commissioner, or any entity with whom the commissioner contracts, for the purpose of conducting an audit of a provider of any of the programs operated or administered by the department pursuant to this chapter or chapter 319t, 319v, 319y or 319ff, shall produce a preliminary written report concerning any audit conducted pursuant to this subsection, and such preliminary report shall be provided to the provider that was the subject of the audit, not **[**more**]** later than sixty days after the conclusion of such audit.

[(6)**]** (7) The commissioner, or any entity with whom the commissioner contracts, for the purpose of conducting an audit of a provider of any of the programs operated or administered by the department pursuant to this chapter or chapter 319t, 319v, 319y or 319ff, shall, following the issuance of the preliminary report pursuant to subdivision **[**(5)**]** (6) of this subsection, hold an exit conference with any provider that was the subject of any audit pursuant to this subsection for the purpose of discussing the preliminary report.

[(7)**]** (8) The commissioner, or any entity with which the commissioner contracts, for the purpose of conducting an audit of a service provider, shall produce a final written report concerning any audit conducted pursuant to this subsection. Such final written report shall be provided to the provider that was the subject of the audit not **[**more**]** later than sixty days after the date of the exit conference conducted pursuant to subdivision **[**(6)**]** (7) of this subsection, unless the commissioner, or any entity with which the commissioner contracts, for the purpose of conducting an audit of a service provider, agrees to a later date or there are other referrals or investigations pending concerning the provider.

[(8)**]** (9) Any provider aggrieved by a decision contained in a final written report issued pursuant to subdivision **[**(7)**]** (8) of this subsection, may, not later than thirty days after the receipt of the final report, request, in writing, a review on all items of aggrievement. Such

request shall contain a detailed written description of each specific item of aggrievement. The designee of the commissioner who presides over the review shall be impartial and shall not be an employee of the Department of Social Services Office of Quality Assurance or an employee of an entity with whom the commissioner contracts for the purpose of conducting an audit of a service provider. Following review on all items of aggrievement, the designee of the commissioner who presides over the review shall issue a final decision.

(10) The provider shall have the right to appeal a final decision to the Superior Court in accordance with the provisions of chapter 54.

[(9)**]** (11) The provisions of this subsection shall not apply to any audit conducted by the Medicaid Fraud Control Unit established within the Office of the Chief State's Attorney.

(12) The commissioner shall adopt regulations, in accordance with the provisions of chapter 54, to carry out the provisions of this subsection and to ensure the fairness of the audit process, including, but not limited to, the sampling methodologies associated with the process.

This act shall take effect as follows and shall amend the following sections:		
Section 1	*July 1, 2010*	17b-99(d)

HS *Joint Favorable*

OFA Fiscal Note

State Impact:

Agency Affected	Fund-Effect	FY 11 $	FY 12 $
Department of Social Services	GF - Cost	Indeterminate	Indeterminate

Note: GF=General Fund

Municipal Impact: None

Explanation

Section 1 of the bill changes the audit methods of the Department of Social Services (DSS) by limiting both the scope of the reviews and the use of extrapolated projections. These changes are expected to reduce the amount of funds that DSS recoups annually from audits. The total reduction in any one year cannot be known in advance. DSS recoups approximately $12 million annually from this process.

Additionally, the bill's provision concerning extrapolation may be in conflict with federal Medicaid requirements. If this is determined to be true, it could jeopardize Connecticut's receipt of federal matching funds.

The bill also gives providers the right to appeal an audit decision to the Superior Court. This change will result in an administrative cost to both DSS and the Superior Court. This cost is expected to be minimal, as DSS averages only 3 requests for audit reviews annually.

The Out Years

The annualized ongoing fiscal impact identified above would continue into the future subject to inflation.

OLR Bill Analysis

SB 283

AN ACT CONCERNING AUDITS BY THE DEPARTMENT OF SOCIAL SERVICES.

SUMMARY:

This bill makes several changes in the law governing audits of providers that bill the Department of Social Services (DSS) for services rendered to clients enrolled in DSS programs. It:

1. limits both the number of claims and time period that can be the subject of a review;

2. prohibits clerical errors to be the basis for extrapolated projections in most cases;

3. establishes a threshold error rate below which extrapolation may not be used;

4. gives the provider the right to appeal final audit decisions to the Superior Court; and

5. requires (a) DSS to adopt regulations to carry out the auditing statute and (b) DSS or the entity it contacts with to perform the audits to provide a copy of these regulations when notifying a provider that it will be audited.

EFFECTIVE DATE: July 1, 2010

AUDIT PROCESS

Review Period

The bill provides that any audit that DSS conducts must be limited to a review of (1) claims filed during the two years before the date the provider receives an audit notice or (2) 200 claims, whichever is less. (It

is not clear whether claims include cost reports submitted by nursing homes and other facilities whose reimbursements are based on these reports.) Currently, DSS has up to seven years to audit nursing home cost reports.

Extrapolation–Clerical Errors

DSS uses an extrapolation process when performing audits. Extrapolation is the practice of (1) dividing the total number of payment errors found in a sample of documents by the sample size to arrive at average errors per sample or an "error rate" and (2) multiplying this rate by the total number of claims to arrive at a presumed, extrapolated number of payment errors for all payments to the provider during the audited time period. The provider must repay DSS based on these extrapolated errors.

The bill prohibits DSS from using any clerical error as the basis for extrapolated projections unless proof of intent to commit fraud or otherwise violate DSS program rules is established. By law, clerical errors generally do not of themselves constitute a willful violation of program rules.

Extrapolation–Payment Error Rate

Current law prohibits a finding of over- or underpayment to a provider to be based on extrapolation unless (1) there is a sustained or high level of payment error involving the provider, (2) documented educational intervention has failed to correct the error, or (3) the value of the of the claims in the aggregate is more than $150,000.

The bill keeps the second option, eliminates the last one, and specifies that the payment error rate must be more than 10% instead of sustained or at a high level.

APPEALS

By law, a provider aggrieved by a decision contained in the final audit report can request a review, which is presided over by an impartial designee of the commissioner who is not an employee of DSS' Office of Quality Assurance or an employee of an entity with

whom the commissioner contracts to conduct the audits. The bill requires the reviewer to issue a final decision after reviewing the provider's items of aggrievement.

The bill also gives the provider the right to appeal the final decision to the Superior Court.

REGULATIONS

The bill requires DSS to adopt regulations to carry out the auditing statute. The regulations must ensure that the audit process is fair, including the sampling methodologies associated with the process.

By, law, DSS or its contracted auditor must notify, in writing, providers that they intend to audit at least 30 days before beginning the audit. But the commissioner can bypass the notification if the health or safety of someone receiving the provider's services is at risk or the provider is engaging in vendor fraud. The bill requires a copy of the regulations to be attached to the notice.

BACKGROUND

Audits

DSS audits providers who bill it for providing services to individuals enrolled in its welfare programs, including the State-Administered General Assistance, Medicaid, HUSKY B, and ConnPACE programs. The audit law also applies to the department's cash assistance programs.

COMMITTEE ACTION

Human Services Committee

Joint Favorable
Yea 15 Nay 4 (03/23/2010)